To: Tina Laidlaw/MO/R8/USEPA/US@EPA;"MumfordD@ci.billings.mt.us" [MumfordD@ci.billings.mt.us]; MumfordD@ci.billings.mt.us" [MumfordD@ci.billings.mt.us]; 'Mathieus, George'" [gemathieus@mt.gov]
From: "McInnis, Amanda"
Sent: Tue 10/16/2012 7:43:22 PM
Subject: Conference Call next Tuesday the 23rd at 10 am 1-866-994-6437 pass code 35570806
draftMLCTnutrientcommentsv2.pdf
amanda.mcinnis@hdrinc.com
hdrinc.com

Please let me know if this day and time works for you guys.

I attached our last comment letter, just for reference.

HDR Engineering
Department Manager

Amanda McInnis, PE

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August X, 2012

Mr. George Mathieus

Montana Department of Environmental Quality
1520 E. 6th Avenue
P.O. Box 200901
Helena, MT 59620

Dear Mr. Mathieus:

On behalf of Montana League of Cities and Towns, I submit these comments on the Draft MDEQ 12 (version 6.3), draft rule (version 7.3), and Carrying out a Substantial and Widespread Economic Analysis for Individual Nutrient Standards Variances and Guidelines for Determining if Wastewater Treatment Facility Can Remain at a Previous General Variance Concentration (version 7.1).

Our text modifications are included on the attached document in redline/strikeout mode with comments shown where necessary. We appreciate MDEQs willingness to listen to our comments and concerns.

The League has four other issues outside of the text modifications it thinks needs to be reconciled before supporting rule adoption:

1) Biological Confirmation –This concept is being used in other states to determine whether a stream is truly impaired. In Maine and in Ohio, it's being used as a test before the criteria are applied, and variances that may be unnecessary are avoided. MDEQ and EPA expressed a resistance to this approach, because it would require modified legislation. However, the current approach does not address biological confirmation in any way.

   The League suggests as a middle ground, that biological confirmation be used as a test before a discharger would consider going to a lower variance level. That is, if a stream has some other indicator of impaired biological health, then reduced concentrations would be possible. If a stream is otherwise healthy, no further treatment is merited. We suggest this be added to Section 4.0 of the version 7.1 document.

2) Adaptive Management—We appreciate MDEQ working with us to develop an approach that makes sense for dischargers as reflected in Section 4.1 of the version 7.1 document.

We are interested in seeing MDEQ show case studies of how this would be used. The document states now that the department would decide whether the next level would "result in significant environmental improvement and progress towards attaining the standard" but does not describe a threshold for how that is determined.

We would like to make it clear that our vision is that a discharger would move to higher levels of treatment incrementally, and collect data to determine actual biological indicators of stream health. Then an assessment would be made about whether higher levels of treatment are merited.

3) Permitting—In Section 2.2 of MDEQ12, DEQ references using the 95th percentile probability distribution of the effluent. We think this reference point is overly conservative for nutrient permitting.

4) TMDL—These documents don't currently describe how the department would determine whether a discharger is an insignificant nutrient source within the TMDL. We would like to discuss this in more detail to understand this pathway.

If you have further questions or concerns about our comments, please feel free to contact me.

Dave Mumford

Chair League of Cities Water Quality Committee